106TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
106–1001

COLORADO UTE SETTLEMENT ACT AMENDMENTS OF 2000

OCTOBER 25, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

R E P O R T

[To accompany H.R. 3112]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3112) to amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; FINDINGS; DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the "Colorado Ute Settlement Act Amendments of 2000".

(b) FINDINGS.—Congress makes the following findings:

(1) In order to provide for a full and final settlement of the claims of the Colorado Ute Indian Tribes on the Animas and La Plata Rivers, the Tribes, the State of Colorado, and certain of the non-Indian parties to the Agreement have proposed certain modifications to the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

(2) The claims of the Colorado Ute Indian Tribes on all rivers in Colorado other than the Animas and La Plata Rivers have been settled in accordance with the provisions of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

(3) The Indian and non-Indian communities of southwest Colorado and northwest New Mexico will be benefited by a settlement of the tribal claims on the Animas and La Plata Rivers that provides the Tribes with a firm water supply without taking water away from existing uses.

(4) The Agreement contemplated a specific timetable for the delivery of irrigation and municipal and industrial water and other benefits to the Tribes from the Animas-La Plata Project, which timetable has not been met. The provision of irrigation water can not presently be satisfied under the current implementation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(5) In order to meet the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and in particular the various biological opinions issued by the Fish and Wildlife Service, the amendments made by this Act are needed to provide for a significant reduction in the facilities and water supply contemplated under the Agreement.

(6) The substitute benefits provided to the Tribes under the amendments made by this Act, including the waiver of capital costs and the provisions of funds for natural resource enhancement, result in a settlement that provides the Tribes with benefits that are equivalent to those that the Tribes would have received under the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

(7) The requirement that the Secretary of the Interior comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other national environmental laws before implementing the proposed settlement will ensure that the satisfaction of the tribal water rights is accomplished in an environmentally responsible fashion.

(8) Federal courts have considered the nature and the extent of Congressional participation when reviewing Federal compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(9) In considering the full range of alternatives for satisfying the water rights claims of the Southern Ute Indian Tribe and Ute Mountain Ute Indian Tribe, Congress has held numerous legislative hearings and deliberations, and reviewed the considerable record including the following documents:

(A) The Final EIS No. INT–FES–80–18, dated July 1, 1980.

(B) The Draft Supplement to the FES No. INT–DES–92–41, dated October 13, 1992.

(C) The Final Supplemental to the FES No. 96–23, dated April 26, 1996;

(D) The Draft Supplemental EIS, dated January 14, 2000.

(c) DEFINITIONS.—In this Act:

(1) AGREEMENT.—The term "Agreement" has the meaning given that term in section 3(1) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

(2) ANIMAS-LA PLATA PROJECT.—The term "Animas-La Plata Project" has the meaning given that term in section 3(2) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

(3) DOLORES PROJECT.—The term "Dolores Project" has the meaning given that term in section 3(3) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2974).

(4) TRIBE; TRIBES.—The term "tribe" or "tribes" has the meaning given that term in section 3(6) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2974).

SEC. 2. AMENDMENTS TO SECTION 6 OF THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1988.

Subsection (a) of section 6 of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2975) is amended to read as follows:

"(a) RESERVOIR; MUNICIPAL AND INDUSTRIAL WATER.—

"(1) FACILITIES.—

"(A) IN GENERAL.—After the date of enactment of this subsection, but prior to January 1, 2005, the Secretary, in order to settle the outstanding claims of the Tribes on the Animas and La Plata Rivers, acting through the Bureau of Reclamation, is specifically authorized to—

"(i) complete construction of, and operate and maintain, a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River to provide for an average annual depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply, which facilities shall—

"(I) be designed and operated in accordance with the hydrologic regime necessary for the recovery of the endangered fish of the San Juan River as determined by the San Juan River Recovery Implementation Program;

"(II) include an inactive pool of an appropriate size to be determined by the Secretary following the completion of required environmental compliance activities; and

"(III) include those recreation facilities determined to be appropriate by agreement between the State of Colorado and the Secretary that shall address the payment of any of the costs of such facilities by the State of Colorado in addition to the costs described in paragraph (3); and

"(ii) deliver, through the use of the project components referred to in clause (i), municipal and industrial water allocations—

"(I) with an average annual depletion not to exceed 16,525 acre-feet of water, to the Southern Ute Indian Tribe for its present and future needs;

"(II) with an average annual depletion not to exceed 16,525 acre-feet of water, to the Ute Mountain Ute Indian Tribe for its present and future needs;

"(III) with an average annual depletion not to exceed 2,340 acre-feet of water, to the Navajo Nation for its present and future needs;

"(IV) with an average annual depletion not to exceed 10,400 acre-feet of water, to the San Juan Water Commission for its present and future needs;

"(V) with an average annual depletion of an amount not to exceed 2,600 acre-feet of water, to the Animas-La Plata Conservancy District for its present and future needs;

"(VI) with an average annual depletion of an amount not to exceed 5,230 acre-feet of water, to the State of Colorado for its present and future needs; and

"(VII) with an average annual depletion of an amount not to exceed 780 acre-feet of water, to the La Plata Conservancy District of New Mexico for its present and future needs.

"(B) APPLICABILITY OF OTHER FEDERAL LAW.—The responsibilities of the Secretary described in subparagraph (A) are subject to the requirements of Federal laws related to the protection of the environment and otherwise applicable to the construction of the proposed facilities, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Clean Water Act (42 U.S.C. 7401 et seq.), and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws.

"(C) LIMITATION.—

"(i) IN GENERAL.—If constructed, the facilities described in subparagraph (A) constitute the Animas-La Plata Project. Construction of any other project features authorized by the Colorado River Basin Project Act (Public Law 90–537; 82 Stat. 885) shall not be commenced without further authorization from Congress.

"(ii) CONTINGENCY IN APPLICATION.—If the facilities described in subparagraph (A) are not constructed and operated, clause (i) shall not take effect.

"(2) TRIBAL CONSTRUCTION COSTS.—Construction costs allocable to the facilities that are required to deliver the municipal and industrial water allocations described in subclauses (I), (II) and (III) of paragraph (1)(A)(ii) shall be nonreimbursable to the United States.

"(3) NONTRIBAL WATER CAPITAL OBLIGATIONS.—

"(A) IN GENERAL.—Under the provisions of section 9 of the Act of August 4, 1939 (43 U.S.C. 485h), the nontribal municipal and industrial water capital repayment obligations for the facilities described in paragraph (1)(A)(i) may be initially satisfied upon the payment in full of the nontribal water capital obligations prior to the initiation of construction. The amount of the obligations described in the preceding sentence shall be determined by agreement between the Secretary of the Interior and the entity responsible for such repayment as to the appropriate reimbursable share of the construction costs allocated to that entity's municipal water supply. Such agreement shall take into account the fact that the construction of facilities to provide irrigation water supplies from the Animas-La Plata Project is not authorized under paragraph (1)(A)(i) and no costs associated with the design or development of such facilities, including costs associated with environmental compliance, shall be allocable to the municipal and industrial users of the facilities authorized under such paragraph.

"(B) NONTRIBAL REPAYMENT OBLIGATION SUBJECT TO FINAL COST ALLOCATION.—The nontribal repayment obligation for the water supply identified in paragraph (1)(A)(ii) shall be subject to a final cost allocation by the Secretary upon project completion. In the event that the final cost allocation indicates that additional repayment is warranted based on the applicable entity's share of project water supply and determination of overall cost, that entity may elect to enter into a new agreement to make the additional payment necessary to secure the original water supply identified in paragraph

(1)(A)(ii). If the repayment entity elects not to enter into a new agreement, the portion of the water supply relinquished by such election should be available to the Secretary for allocation to other project purposes. Additional repayment shall only be warranted for reasonable and unforeseen costs associated with project construction as determined by the Secretary in consultation with the relevant repayment entities.

"(C) REPORT.—Not later than April 1, 2001, the Secretary shall report to Congress on the status of the cost-share agreements contemplated in subparagraph (A). In the event that no agreement is reached with either the Animas-La Plata Conservancy District or the State of Colorado for the water allocations set forth in subclauses (V) and (VI) of paragraph (1)(A)(ii), those allocations shall be reallocated equally to the Colorado Ute Tribes.

"(4) TRIBAL WATER ALLOCATIONS.—

"(A) IN GENERAL.—With respect to municipal and industrial water allocated to a Tribe from the Animas-La Plata Project or the Dolores Project, until that water is first used by a Tribe or used pursuant to a water use contract with the Tribe, the Secretary shall pay the annual operation, maintenance, and replacement costs allocable to that municipal and industrial water allocation of the Tribe.

"(B) TREATMENT OF COSTS.—A Tribe shall not be required to reimburse the Secretary for the payment of any cost referred to in subparagraph (A).

"(5) REPAYMENT OF PRO RATA SHARE.—Upon a Tribe's first use of an increment of a municipal and industrial water allocation described in paragraph (4), or the Tribe's first use of such water pursuant to the terms of a water use contract—

"(A) repayment of that increment's pro rata share of those allocable construction costs for the Dolores Project shall be made by the Tribe; and

"(B) the Tribe shall bear a pro rata share of the allocable annual operation, maintenance, and replacement costs of the increment as referred to in paragraph (4).".

SEC. 3. MISCELLANEOUS.

The Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973) is amended by adding at the end the following:

"SEC. 15. NEW MEXICO AND NAVAJO NATION WATER MATTERS.

"(a) ASSIGNMENT OF WATER PERMIT.—Upon the request of the State Engineer of the State of New Mexico, the Secretary shall, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or to the New Mexico Interstate Stream Commission in accordance with the request such portion of the Department of the Interior's interest in New Mexico Engineer Permit Number 2883, dated May 1, 1956, in order to fulfill the New Mexico purposes of the Animas-La Plata Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water involved.

"(b) NAVAJO NATION MUNICIPAL PIPELINE.—The Secretary may construct a water line to augment the existing system that conveys the municipal water supplies, in an amount not less than 4,680 acre-feet per year, of the Navajo Nation to the Navajo Indian Reservation at Shiprock, New Mexico. The Secretary shall comply with all applicable environmental laws with respect to such water line. Construction costs allocated to the Navajo Nation for such water line shall be nonreimbursable to the United States.

"(c) PROTECTION OF NAVAJO WATER CLAIMS.—Nothing in this Act shall be construed to quantify or otherwise adversely affect the water rights and the claims of entitlement to water of the Navajo Nation.

"SEC. 16. TRIBAL RESOURCE FUNDS.

"(a) ESTABLISHMENT.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $8,000,000 per year for 5 fiscal years beginning in fiscal year 2002. Not later than 60 days after amounts are appropriated and available to the Secretary for a fiscal year under this paragraph, the Secretary shall make a payment to each of the Tribal Resource Funds established under paragraph (2). Each such payment shall be equal to 50 percent of the amount appropriated for the fiscal year involved.

"(2) FUNDS.—The Secretary shall establish a—

"(A) Southern Ute Tribal Resource Fund; and

"(B) Ute Mountain Ute Tribal Resource Fund.

A separate account shall be maintained for each such Fund.

"(b) TRIBAL DEVELOPMENT.—

"(1) INVESTMENT.—The Secretary shall, in the absence of an approved tribal investment plan provided for under paragraph (2), invest the amount in each Tribal Resource Fund in accordance with the Act entitled, 'An Act to authorize the deposit and investment of Indian funds' approved June 24, 1938 (25 U.S.C. 162a). The Secretary, subject to subsection (e), shall disburse, at the request of a Tribe, the principal and income in its Resource Fund, or any part thereof, in accordance with a resource acquisition and enhancement plan approved under paragraph (3).

"(2) INVESTMENT PLAN.—

"(A) IN GENERAL.—In lieu of the investment provided for in paragraph (1), a Tribe may submit a tribal investment plan applicable to all or part of the Tribe's Tribal Resource Fund.

"(B) APPROVAL.—Not later than 60 days after the date on which an investment plan is submitted under subparagraph (A), the Secretary shall approve such investment plan if the Secretary finds that the plan is reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary subject to subsection (e), the Tribal Resource Fund involved shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan.

"(C) COMPLIANCE.—The Secretary may take such steps as the Secretary determines to be necessary to monitor the compliance of a Tribe with an investment plan approved under subparagraph (B). The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds.

"(D) ECONOMIC DEVELOPMENT PLAN.—The principal and income derived from tribal investments under an investment plan approved under subparagraph (B) shall be subject to the provisions of this section and shall be expended only in accordance with an economic development plan approved under paragraph (3).

"(3) ECONOMIC DEVELOPMENT PLAN.—

"(A) IN GENERAL.—Each Tribe shall submit to the Secretary a resource acquisition and enhancement plan for all or any portion of its Tribal Resource Fund.

"(B) APPROVAL.—Not later than 60 days after the date on which a plan is submitted under subparagraph (A), the Secretary shall approve such investment plan if the Secretary finds that the plan is reasonably related to the protection, acquisition, enhancement, or development of natural resources for the benefit of the Tribe and its members. If the Secretary does not approve such plan, the Secretary shall, at the time of such determination, set forth in writing and with particularity the reasons for such disapproval.

"(C) MODIFICATION.—Subject to the approval of the Secretary, each Tribe may modify a plan approved under subparagraph (B).

"(D) LIABILITY.—The United States shall not be directly or indirectly liable for any claim or cause of action arising from the approval of a plan under this paragraph, or from the use and expenditure by the Tribe of the principal or interest of the Funds.

"(c) LIMITATION ON PER CAPITA DISTRIBUTIONS.—No part of the principal contained in the Tribal Resource Fund, or of the income accruing to such funds, or the revenue from any water use contract, shall be distributed to any member of either Tribe on a per capita basis.

"(d) LIMITATION ON SETTING ASIDE FINAL CONSENT DECREE.—Neither the Tribes nor the United States shall have the right to set aside the final consent decree solely because the requirements of subsection (b) are not complied with or implemented.

"(e) LIMITATION ON DISBURSEMENT OF TRIBAL RESOURCE FUNDS.—Any moneys appropriated under this section shall be placed into the Southern Ute Tribal Resource Fund and the Ute Mountain Ute Tribal Resource Fund in the Treasury of the United States but shall not be available for disbursement under this section until the final settlement of the tribal claims as provided in section 18. The Secretary of the Interior may, in the Secretary's sole discretion, authorize the disbursement of funds prior to the final settlement in the event that the Secretary determines that substantial portions of the settlement have been completed. In the event that the funds are not disbursed under the terms of this section by December 31, 2012, such funds shall be deposited in the general fund of the Treasury.

"SEC. 17. COLORADO UTE SETTLEMENT FUND.

"(a) ESTABLISHMENT OF FUND.—There is hereby established within the Treasury of the United States a fund to be known as the 'Colorado Ute Settlement Fund'.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Colorado Ute Settlement Fund such funds as are necessary to complete the construction of the facilities described in section 6(a)(1)(A) within 7 years of the date of enactment of this section. Such funds are authorized to be appropriated for each of the first 5 fiscal years beginning with the first full fiscal year following the date of enactment of this section.

"SEC. 18. FINAL SETTLEMENT.

"(a) IN GENERAL.—The construction of the facilities described in section 6(a)(1)(A), the allocation of the water supply from those facilities to the Tribes as described in that section, the provision of funds to the Tribes in accordance with section 16, and the issuance of an amended final consent decree as contemplated in subsection (c) shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata Rivers in the State of Colorado.

"(b) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect the right of the Tribes to water rights on the streams and rivers described in the Agreement, other than the Animas and La Plata Rivers, to receive the amounts of water dedicated to tribal use under the Agreement, or to acquire water rights under the laws of the State of Colorado.

"(c) ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall file with the District Court, Water Division Number 7, of the State of Colorado, such instruments as may be necessary to request the court to amend the final consent decree to provide for the amendments made to this Act under the Colorado Ute Settlement Act Amendments of 2000. The amended final consent decree shall specify terms and conditions to provide for an extension of the current January 1, 2005, deadline for the tribes to commence litigation of their reserved rights claims on the Animas and La Plata Rivers.

"SEC. 19. STATUTORY CONSTRUCTION; TREATMENT OF CERTAIN FUNDS.

"(a) IN GENERAL.—Nothing in the amendments made by the Colorado Ute Settlement Act Amendments of 2000 shall be construed to affect the applicability of any provision of this Act other than those provisions amended.

"(b) TREATMENT OF UNCOMMITTED PORTION OF COST-SHARING OBLIGATION.—The uncommitted portion of the cost-sharing obligation of the State of Colorado referred to in section 6(a)(3) shall be made available, upon the request of the State of Colorado, to the State of Colorado after the date on which payment is made of the amount specified in that section.".

PURPOSE OF THE BILL

The purpose of H.R. 3112 is to amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Animas La Plata (ALP) Project was originally authorized by the Colorado River Basin Project Act of 1968 to be located in La Plata County in southwestern Colorado and in San Juan County in northwestern New Mexico. The ALP Project was designed to provide irrigation, municipal and industrial water supplies to the Colorado Ute Tribes and other project beneficiaries. In 1976, the United States filed suit to quantify tribal water rights within the rivers and streams in southwestern Colorado for the Southern Ute and Ute Mountain Ute Indian Tribes of Colorado (collectively the "Ute tribes"). The priority date for the tribal water corresponded to the date the reservation was established in 1868.

The 1986 settlement made use of the water supply to be developed by the ALP and Delores Projects to satisfy the Ute tribes' reserved water rights claims. In 1988, Congress passed a settlement act for the Ute tribes, the Colorado Ute Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

The Bureau of Reclamation's 1996 Final Environmental Statement documents for the ALP Project generated significant controversy among project participants and led to the "Romer-Schoettler process". That review, headed by then-Colorado Governor Roy Romer and Lt. Governor Gail Schoettler, convened both supporters and opponents of the ALP Project in an attempt to address unresolved issues and gain consensus on an alternative to the original project, which would satisfy the Indian water rights confirmed by the 1988 settlement act.

As a result of the Romer-Schoettler process, new structural and non-structural alternatives evolved in August 1997. The structural alternative, called the Animas-La Plata Reconciliation Plan, included a scaled-down version of the proposed reservoir at Ridges Basin that would store water from the Animas River. The non-structural alternative, referred to as the Animas River Citizen's Coalition Conceptual Alternative, focused on providing tribes funds to purchase water from existing projects, and/or the acquisition of existing direct flow water rights, as well as the use and/or modification of existing federal facilities.

Two years ago, the Water and Power Subcommittee of the Committee on Resources held a hearing to address issues raised by the Romer-Schoettler process regarding what direction to take with the ALP Project, and to hear testimony from project proponents, opponents, and the Administration. During the hearing, then Counselor to the Secretary of the Interior David Hayes indicated the desire of the Administration to address additional issues. On August 11, 1998, the Secretary of the Interior presented an Administration proposal to implement the 1988 Settlement Act. H.R. 3112 is an attempt by project beneficiaries to implement these negotiations and come to a final resolution of the Ute tribes' water rights.

Under the terms of the 1986 Settlement Agreement, the federal government must construct facilities to deliver water to the Ute tribes by 2000. If that does not occur, the Ute tribes may return to court by January 1, 2005, to assert their reserved water rights claims.

In contrast with the 1986 Settlement, under H.R. 3112 the Ute tribes agree to forgo asserting their reserved water rights claims if the substitute benefits provided under the bill are adopted (i.e. $40 million trust fund and making the Indian municipal and industrial portion of the project nonreimbursable).

COMMITTEE ACTION

H.R. 3112 was introduced on October 20, 1999, by Congressman Scott McInnis (R–CO). The bill was referred to the Committee on Resources, and subsequently to the Subcommittee on Water and Power. On May 11, 2000, the Subcommittee held a hearing on the bill. On July 19, 2000, the Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration of the bill by unanimous consent. Congressman John T. Doolittle (R–CA) offered an amendment in the nature of a substitute which clarified the nature of the substitute benefits to the Indian tribes, clarified that environmental compliance will be completed for all features of the project, clarified the non-Indian municipal and industrial portion of the project would be prepaid by the sponsors. Congressman Peter DeFazio (D–OR) of-

fered an amendment to the Doolittle amendment regarding the deauthorization of the remainder of the project. The amendment failed by voice vote. Congressman Tom Udall (D–NM) offered an amendment regarding judicial review. The amendment failed on a voice vote. The Doolittle amendment was then adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; findings; definitions

This section cites the short title as "Colorado Ute Settlement Act Amendments of 2000". The section also states that the substitute benefits provided to the Ute tribes under this bill result in a settlement that provides the Ute tribes with benefits that are equivalent to those that the tribes would have received under the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585).

Section 2. Amendments to section 6 of the Colorado Ute Indian Water Rights Settlement Act of 1988

This section amends the Colorado Ute Indian Water Rights Settlement Act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to complete the construction of, and operate and maintain, a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities to divert and store an average annual depletion of 57,000 acre-feet of water from the Animas River to provide municipal and industrial water supply, and deliver through the use of such components specified municipal and industrial water allocations to the San Juan Water Commission, Animas LaPlata Conservancy District, State of Colorado, La Plata Conservancy District of New Mexico, Southern Ute and Ute Mountain Ute tribes, and the Navaho Nation.

The section provides that construction costs required to deliver each Tribe's water allocation shall be nonreimbursable.

The Secretary under this section, and in the bill, may not seek repayment of costs if those costs have been specifically determined by Congress to be non-reimbursable and non-recoverable.

Section 3. Miscellaneous

This section adds several new sections to the Colorado Ute Indian Water Rights Settlement Act. The new section 15 requires the Secretary, upon request of the State Engineer of New Mexico, to assign to the New Mexico project beneficiaries or the New Mexico Interstate Stream Commission any portion of the Secretary of the Interior's interests under a specified permit to fulfill the New Mexico purposes of the project, provided that the assignment shall not affect the application of the Endangered Species Act of 1973 to the use of water.

The section also authorizes the Secretary to construct a water line to augment the existing system that conveys municipal water supplies to the Navajo Indian Reservation at Shiprock, New Mexico. The section makes construction costs for the water line nonreimbursable.

New section 16 authorizes appropriations to the Southern Ute and Ute Mountain Ute Tribal Resource Funds, and provides for disbursement of Fund monies in accordance with approved natural resource acquisition and enhancement plans.

New section 17 establishes the Colorado Ute Settlement Fund in the Treasury and authorizes appropriations to the Fund to complete the construction of project facilities.

New section 18 requires the construction of facilities, allocation of water supply to the Indian tribes, and provision of funds under this bill to constitute final settlement of tribal claims to water rights on the Animas and La Plata Rivers. New section 19 provides a rule of statutory construction and specifies the treatment of certain funds.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The Committee believes that enactment of this bill would have little impact on the federal budget.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1988

* * * * * * *

SEC. 6. REPAYMENT OF PROJECT COSTS.

[(a) MUNICIPAL AND INDUSTRIAL WATER.—(1) The Secretary shall defer, without interest, the repayment of the construction costs allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used either by the Tribe or pursuant to a water use contract with the Tribe. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects, which costs shall not be reimbursable by the Tribe.

[(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, repayment of that increment's pro rata share of such allocable construction costs shall commence by the Tribe and the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs.]

(a) RESERVOIR; MUNICIPAL AND INDUSTRIAL WATER.—

(1) FACILITIES.—

(A) IN GENERAL.—After the date of enactment of this subsection, but prior to January 1, 2005, the Secretary, in order to settle the outstanding claims of the Tribes on the Animas and La Plata Rivers, acting through the Bureau of Reclamation, is specifically authorized to—

(i) complete construction of, and operate and maintain, a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River to provide for an average annual depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply, which facilities shall—

(I) be designed and operated in accordance with the hydrologic regime necessary for the recovery of the endangered fish of the San Juan River as determined by the San Juan River Recovery Implementation Program;

(II) include an inactive pool of an appropriate size to be determined by the Secretary following the completion of required environmental compliance activities; and

(III) include those recreation facilities determined to be appropriate by agreement between the State of Colorado and the Secretary that shall ad-

dress the payment of any of the costs of such facilities by the State of Colorado in addition to the costs described in paragraph (3); and

(ii) deliver, through the use of the project components referred to in clause (i), municipal and industrial water allocations—

(I) with an average annual depletion not to exceed 16,525 acre-feet of water, to the Southern Ute Indian Tribe for its present and future needs;

(II) with an average annual depletion not to exceed 16,525 acre-feet of water, to the Ute Mountain Ute Indian Tribe for its present and future needs;

(III) with an average annual depletion not to exceed 2,340 acre-feet of water, to the Navajo Nation for its present and future needs;

(IV) with an average annual depletion not to exceed 10,400 acre-feet of water, to the San Juan Water Commission for its present and future needs;

(V) with an average annual depletion of an amount not to exceed 2,600 acre-feet of water, to the Animas-La Plata Conservancy District for its present and future needs;

(VI) with an average annual depletion of an amount not to exceed 5,230 acre-feet of water, to the State of Colorado for its present and future needs; and

(VII) with an average annual depletion of an amount not to exceed 780 acre-feet of water, to the La Plata Conservancy District of New Mexico for its present and future needs.

(B) APPLICABILITY OF OTHER FEDERAL LAW.—The responsibilities of the Secretary described in subparagraph (A) are subject to the requirements of Federal laws related to the protection of the environment and otherwise applicable to the construction of the proposed facilities, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Clean Water Act (42 U.S.C. 7401 et seq.), and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws.

(C) LIMITATION.—

(i) IN GENERAL.—If constructed, the facilities described in subparagraph (A) constitute the Animas-La Plata Project. Construction of any other project features authorized by the Colorado River Basin Project Act (Public Law 90–537; 82 Stat. 885) shall not be commenced without further authorization from Congress.

(ii) CONTINGENCY IN APPLICATION.—If the facilities described in subparagraph (A) are not constructed and operated, clause (i) shall not take effect.

(2) TRIBAL CONSTRUCTION COSTS.—Construction costs allocable to the facilities that are required to deliver the municipal

and industrial water allocations described in subclauses (I), (II) and (III) of paragraph (1)(A)(ii) shall be nonreimbursable to the United States.

(3) NONTRIBAL WATER CAPITAL OBLIGATIONS.—

(A) IN GENERAL.—Under the provisions of section 9 of the Act of August 4, 1939 (43 U.S.C. 485h), the nontribal municipal and industrial water capital repayment obligations for the facilities described in paragraph (1)(A)(i) may be initially satisfied upon the payment in full of the nontribal water capital obligations prior to the initiation of construction. The amount of the obligations described in the preceding sentence shall be determined by agreement between the Secretary of the Interior and the entity responsible for such repayment as to the appropriate reimbursable share of the construction costs allocated to that entity's municipal water supply. Such agreement shall take into account the fact that the construction of facilities to provide irrigation water supplies from the Animas-La Plata Project is not authorized under paragraph (1)(A)(i) and no costs associated with the design or development of such facilities, including costs associated with environmental compliance, shall be allocable to the municipal and industrial users of the facilities authorized under such paragraph.

(B) NONTRIBAL REPAYMENT OBLIGATION SUBJECT TO FINAL COST ALLOCATION.—The nontribal repayment obligation for the water supply identified in paragraph (1)(A)(ii) shall be subject to a final cost allocation by the Secretary upon project completion. In the event that the final cost allocation indicates that additional repayment is warranted based on the applicable entity's share of project water supply and determination of overall cost, that entity may elect to enter into a new agreement to make the additional payment necessary to secure the original water supply identified in paragraph (1)(A)(ii). If the repayment entity elects not to enter into a new agreement, the portion of the water supply relinquished by such election should be available to the Secretary for allocation to other project purposes. Additional repayment shall only be warranted for reasonable and unforeseen costs associated with project construction as determined by the Secretary in consultation with the relevant repayment entities.

(C) REPORT.—Not later than April 1, 2001, the Secretary shall report to Congress on the status of the cost-share agreements contemplated in subparagraph (A). In the event that no agreement is reached with either the Animas-La Plata Conservancy District or the State of Colorado for the water allocations set forth in subclauses (V) and (VI) of paragraph (1)(A)(ii), those allocations shall be reallocated equally to the Colorado Ute Tribes.

(4) TRIBAL WATER ALLOCATIONS.—

(A) IN GENERAL.—With respect to municipal and industrial water allocated to a Tribe from the Animas-La Plata Project or the Dolores Project, until that water is first used by a Tribe or used pursuant to a water use contract with the Tribe, the Secretary shall pay the annual operation,

maintenance, and replacement costs allocable to that municipal and industrial water allocation of the Tribe.

(B) TREATMENT OF COSTS.—A Tribe shall not be required to reimburse the Secretary for the payment of any cost referred to in subparagraph (A).

(5) REPAYMENT OF PRO RATA SHARE.—Upon a Tribe's first use of an increment of a municipal and industrial water allocation described in paragraph (4), or the Tribe's first use of such water pursuant to the terms of a water use contract—

(A) repayment of that increment's pro rata share of those allocable construction costs for the Dolores Project shall be made by the Tribe; and

(B) the Tribe shall bear a pro rata share of the allocable annual operation, maintenance, and replacement costs of the increment as referred to in paragraph (4).

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SEC. 15. NEW MEXICO AND NAVAJO NATION WATER MATTERS.

(a) ASSIGNMENT OF WATER PERMIT.—Upon the request of the State Engineer of the State of New Mexico, the Secretary shall, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or to the New Mexico Interstate Stream Commission in accordance with the request such portion of the Department of the Interior's interest in New Mexico Engineer Permit Number 2883, dated May 1, 1956, in order to fulfill the New Mexico purposes of the Animas-La Plata Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water involved.

(b) NAVAJO NATION MUNICIPAL PIPELINE.—The Secretary may construct a water line to augment the existing system that conveys the municipal water supplies, in an amount not less than 4,680 acre-feet per year, of the Navajo Nation to the Navajo Indian Reservation at Shiprock, New Mexico. The Secretary shall comply with all applicable environmental laws with respect to such water line. Construction costs allocated to the Navajo Nation for such water line shall be nonreimbursable to the United States.

(c) PROTECTION OF NAVAJO WATER CLAIMS.—Nothing in this Act shall be construed to quantify or otherwise adversely affect the water rights and the claims of entitlement to water of the Navajo Nation.

SEC. 16. TRIBAL RESOURCE FUNDS.

(a) ESTABLISHMENT.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $8,000,000 per year for 5 fiscal years beginning in fiscal year 2002. Not later than 60 days after amounts are appropriated and available to the Secretary for a fiscal year under this paragraph, the Secretary shall make a payment to each of the Tribal Resource Funds established under paragraph (2). Each such payment shall be equal to 50 percent of the amount appropriated for the fiscal year involved.

(2) FUNDS.—The Secretary shall establish a—

(A) Southern Ute Tribal Resource Fund; and

(B) Ute Mountain Ute Tribal Resource Fund.

A separate account shall be maintained for each such Fund.

(b) TRIBAL DEVELOPMENT.—

(1) INVESTMENT.—The Secretary shall, in the absence of an approved tribal investment plan provided for under paragraph (2), invest the amount in each Tribal Resource Fund in accordance with the Act entitled, "An Act to authorize the deposit and investment of Indian funds" approved June 24, 1938 (25 U.S.C. 162a). The Secretary, subject to subsection (e), shall disburse, at the request of a Tribe, the principal and income in its Resource Fund, or any part thereof, in accordance with a resource acquisition and enhancement plan approved under paragraph (3).

(2) INVESTMENT PLAN.—

(A) IN GENERAL.—In lieu of the investment provided for in paragraph (1), a Tribe may submit a tribal investment plan applicable to all or part of the Tribe's Tribal Resource Fund.

(B) APPROVAL.—Not later than 60 days after the date on which an investment plan is submitted under subparagraph (A), the Secretary shall approve such investment plan if the Secretary finds that the plan is reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary subject to subsection (e), the Tribal Resource Fund involved shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan.

(C) COMPLIANCE.—The Secretary may take such steps as the Secretary determines to be necessary to monitor the compliance of a Tribe with an investment plan approved under subparagraph (B). The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds.

(D) ECONOMIC DEVELOPMENT PLAN.—The principal and income derived from tribal investments under an investment plan approved under subparagraph (B) shall be subject to the provisions of this section and shall be expended only in accordance with an economic development plan approved under paragraph (3).

(3) ECONOMIC DEVELOPMENT PLAN.—

(A) IN GENERAL.—Each Tribe shall submit to the Secretary a resource acquisition and enhancement plan for all or any portion of its Tribal Resource Fund.

(B) APPROVAL.—Not later than 60 days after the date on which a plan is submitted under subparagraph (A), the Secretary shall approve such investment plan if the Secretary finds that the plan is reasonably related to the protection, acquisition, enhancement, or development of natural resources for the benefit of the Tribe and its members. If the Secretary does not approve such plan, the Secretary shall, at the time of such determination, set forth in writing and with particularity the reasons for such disapproval.

(C) MODIFICATION.—Subject to the approval of the Secretary, each Tribe may modify a plan approved under subparagraph (B).

(D) LIABILITY.—The United States shall not be directly or indirectly liable for any claim or cause of action arising from the approval of a plan under this paragraph, or from the use and expenditure by the Tribe of the principal or interest of the Funds.

(c) LIMITATION ON PER CAPITA DISTRIBUTIONS.—No part of the principal contained in the Tribal Resource Fund, or of the income accruing to such funds, or the revenue from any water use contract, shall be distributed to any member of either Tribe on a per capita basis.

(d) LIMITATION ON SETTING ASIDE FINAL CONSENT DECREE.—Neither the Tribes nor the United States shall have the right to set aside the final consent decree solely because the requirements of subsection (b) are not complied with or implemented.

(e) LIMITATION ON DISBURSEMENT OF TRIBAL RESOURCE FUNDS.—Any moneys appropriated under this section shall be placed into the Southern Ute Tribal Resource Fund and the Ute Mountain Ute Tribal Resource Fund in the Treasury of the United States but shall not be available for disbursement under this section until the final settlement of the tribal claims as provided in section 18. The Secretary of the Interior may, in the Secretary's sole discretion, authorize the disbursement of funds prior to the final settlement in the event that the Secretary determines that substantial portions of the settlement have been completed. In the event that the funds are not disbursed under the terms of this section by December 31, 2012, such funds shall be deposited in the general fund of the Treasury.

SEC. 17. COLORADO UTE SETTLEMENT FUND.

(a) ESTABLISHMENT OF FUND.—There is hereby established within the Treasury of the United States a fund to be known as the "Colorado Ute Settlement Fund".

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Colorado Ute Settlement Fund such funds as are necessary to complete the construction of the facilities described in section 6(a)(1)(A) within 7 years of the date of enactment of this section. Such funds are authorized to be appropriated for each of the first 5 fiscal years beginning with the first full fiscal year following the date of enactment of this section.

SEC. 18. FINAL SETTLEMENT.

(a) IN GENERAL.—The construction of the facilities described in section 6(a)(1)(A), the allocation of the water supply from those facilities to the Tribes as described in that section, the provision of funds to the Tribes in accordance with section 16, and the issuance of an amended final consent decree as contemplated in subsection (c) shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata Rivers in the State of Colorado.

(b) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect the right of the Tribes to water rights on the streams and rivers described in the Agreement, other than the Animas and La Plata Rivers, to receive the amounts of water dedi-

cated to tribal use under the Agreement, or to acquire water rights under the laws of the State of Colorado.

(c) ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall file with the District Court, Water Division Number 7, of the State of Colorado, such instruments as may be necessary to request the court to amend the final consent decree to provide for the amendments made to this Act under the Colorado Ute Settlement Act Amendments of 2000. The amended final consent decree shall specify terms and conditions to provide for an extension of the current January 1, 2005, deadline for the tribes to commence litigation of their reserved rights claims on the Animas and La Plata Rivers.

SEC. 19. STATUTORY CONSTRUCTION; TREATMENT OF CERTAIN FUNDS.

(a) IN GENERAL.—Nothing in the amendments made by the Colorado Ute Settlement Act Amendments of 2000 shall be construed to affect the applicability of any provision of this Act other than those provisions amended.

(b) TREATMENT OF UNCOMMITTED PORTION OF COST-SHARING OBLIGATION.—The uncommitted portion of the cost-sharing obligation of the State of Colorado referred to in section 6(a)(3) shall be made available, upon the request of the State of Colorado, to the State of Colorado after the date on which payment is made of the amount specified in that section.

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